

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Multi-Association Group (MAG) Plan for	)	CC Docket No. 00-256
Regulation of Interstate Services of	)	
Non-Price Cap Incumbent Local Exchange	)	
Carriers and Interexchange Carriers	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Access Charge Reform for Incumbent	)	CC Docket No. 98-77
Local Exchange Carriers Subject to Rate-of-	)	
Return Regulation	)	
	)	
Prescribing the Authorized Rate of Return For	)	CC Docket No. 98-166
Interstate Services of Local Exchange Carriers	)	

***EX PARTE* REPLY COMMENTS OF  
THE STATE OF HAWAII**

The State of Hawaii (the “State”), by its attorneys and pursuant to section 1.415 of the Commission’s rules, 47 C.F.R. § 1.415, hereby provides these reply comments on an *ex parte* basis in response to the comments of AT&T on the Commission’s Second Further Notice of Proposed Rulemaking (“SFNPRM”) in the above captioned proceeding.<sup>1</sup>

Throughout this proceeding, the Commission has sought to update the access charge and universal support structure for rural “rate-of-return” local exchange carriers (“LECs”), which

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<sup>1</sup> These Comments are submitted by the State of Hawaii acting through its Department of Commerce and Consumer Affairs.

serve about eight percent of U.S. consumers.<sup>2</sup> The Commission had previously adopted similar changes for regional bell operating companies (“RBOCs”) and other “price cap” LECs.

Although the State takes no position on these changes, the State observes that one of their collateral benefits is that they have made it far easier for national interexchange carriers (“IXCs”) to average their long distance rates as required by Section 254(g) of the Communications Act. The Commission took local loop costs that used to be recovered by IXCs in their long distance rates and shifted them to LECs for recovery either from local customers or from the universal service fund. To the extent that these local loop costs were variable in nature (differing between high cost and low cost areas), their elimination as IXC cost items made it easier for IXCs to average their long distance rates nationwide.

For example, the Commission eliminated the Carrier Common Line (“CCL”) charge, which was levied on IXCs on a per-minute basis, and replaced it with an increase in the Subscriber Line Charges (“SLC”), which is imposed by LECs on their customers. In addition, the Commission created a new universal support fund to compensate rural carriers to the extent that increases in the SLC were not sufficient to cover the costs for LECs. The Commission also shifted for accounting purposes some of the costs of the rural local loop from the traffic sensitive, to the non-traffic sensitive category. Reducing the number of traffic sensitive costs reduced the size of the access charge that IXCs must pay. The Commission’s reforms therefore resulted in significant benefit to national IXCs, substantially reducing the difference between the access charges that are levied on IXCs in urban and rural areas.

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<sup>2</sup> See *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, et al.*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256; Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) (“MAG Order”).

Despite these significant developments, AT&T has continued to use this proceeding as a forum to argue against the toll averaging requirements of Section 254(g) and suggest inappropriately that they must be converted to an explicit universal support mechanism, permitting IXC's to be reimbursed by the universal service fund for costs they might incur in averaging long distance rates nationwide. Most recently, AT&T claimed that the Commission's long standing toll rate averaging and rate integration requirements are "contrary to statutory directives and court rulings" because they violate the prohibition on implicit universal support subsidies specified in Section 254(e) of the Act.<sup>3</sup> As AT&T acknowledges, AT&T and its Rural Choice Coalition ("RCC") have made essentially the same argument repeatedly in this proceeding. The RCC also raised these issues in a petition for reconsideration of the MAG Order,<sup>4</sup> which the State of Hawaii responded to in February 2002.<sup>5</sup>

In persisting with this line of argument, AT&T misinterprets the clear language of Section 254 by suggesting that the universal service requirements of Section 254(e) and the geographic averaging and rate integration requirements of Section 254(g) involve associated requirements. In reality, the two statutory sections delineate entirely different obligations, each of which were adopted by Congress for specific purposes and with distinct implementation requirements.

Section 254(e) authorizes the provision of funding to "eligible telecommunications carriers" to support the costs of providing universal services to consumers and institutions, while

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<sup>3</sup> See *AT&T Comments on MAG SFNPRM*, CC Docket Nos. 00-256, et al. (April 23, 2004) ("*AT&T SFNPRM Comments*").

<sup>4</sup> See *Rural Consumer Choice Coalition Petition for Reconsideration*, CC Docket No. 00-256, et al. (Dec. 28, 2001).

<sup>5</sup> See *Comments of the State of Hawaii*, CC Docket No. 00-256, et al. (Feb. 14, 2002).

Section 254(g) mandates rate averaging for all interstate or long distance services.<sup>6</sup> Section 254(e) applies solely to eligible telecommunications carriers (excluding IXC), while Section 254(g) applies solely to IXC, which, by their nature, are not eligible to receive universal service support.

Most important, Section 254(e) prohibits the use of implicit subsidies, while Section 254(g) requires it. Section 254(g) directs the Commission to require IXC to average their rates *because* disparities exist in the cost of providing service in different regions and states, not *in case* of such disparities. In codifying Section 254(g), Congress was fully aware that cost disparities existed and mandated that IXC internalize the disparities by averaging rates. It is therefore disingenuous for AT&T to suggest that restrictions on implicit subsidies indicated in Section 254(e) of the Act have any bearing on the Act's separate Section 254(g) requirements.

Thus, although the State has no objection to the Commission's efforts to reduce disparities in access charges and help facilitate compliance with Section 254(g), the Commission is under no obligation to do so. The State is aware of AT&T's long standing concern that the rate averaging requirements of Section 254(g) have the potential to impact the pricing of services provided by national IXC more than those of regional IXC.<sup>7</sup> The measures adopted by the

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<sup>6</sup> Section 254(g) requires IXC to comply with geographic rate averaging by charging rates in rural areas that are no higher than the rates they charge in urban areas. Section 254(g) also requires IXC to comply with the statute's rate integration requirement by providing services to their subscribers in each State at rates no higher than the rates charged to their subscribers in any other State.

<sup>7</sup> See, e.g., *AT&T SFNPRM Comments* at 11.

Commission in its *MAG Order*, however, relieved these pressures substantially.<sup>8</sup> Any remaining differences should be offset by the significant economies of scale enjoyed by national IXC.

The Commission has appropriately and repeatedly reaffirmed its commitment to the general principles of Section 254(g), along with its specific requirements. Most recently, the Commission denied an application for review filed by IT&E Overseas, Inc.<sup>9</sup> of a Common Carrier Bureau order rejecting proposed exceptions to the Section 254(g) rate integration requirements.<sup>10</sup> In reaching its decision, the Commission reaffirmed that IXCs cannot employ rate schedules that vary based on the location of a call termination point and cannot offer temporary promotions and private line services on different terms and conditions to different groups of subscribers in violation of the rate averaging requirements.<sup>11</sup> The Commission observed that any other approach would allow IXCs to charge subscribers in every state a higher rate for calls destined for one state than assessed for calls of the same distance and duration to

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<sup>8</sup> *Order*, ¶ 89. The access charge reforms that the Commission adopted in the *Order* were two-fold. First, the Commission eliminated the CCL charge, which it had eliminated previously for price cap carriers. Second, the Commission shifted some of the costs of the rural local loop from the traffic sensitive, to the non-traffic sensitive category, eliminating them from the calculation of access charges that are levied on IXCs.

<sup>9</sup> See *Application for Review, filed by IT&E Overseas, Inc.*, CC Docket No. 96-61 (Aug. 29, 1997). IT&E is a facilities-based international and domestic IXC operating in Guam and the Commonwealth of the Northern Marianas Islands.

<sup>10</sup> See *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Memorandum Opinion and Order, 12 FCC Rcd 11,548, DA 97-1628 (Com. Car. Bur., Jul. 30, 1997)

<sup>11</sup> See *id.*, ¶ 7-8.

other states.<sup>12</sup> As a result, IXCs could impermissibly charge “excessive rates for calls to specific offshore points.”<sup>13</sup>

The State supports fully the Commission’s conclusions regarding the statutory requirements of Section 254(g). The State also believes that the issue should not, and need not, be addressed further as a part of this proceeding. The Commission initiated this proceeding to consider interstate access charge and universal service support reform for non-price cap carriers. The geographic rate averaging and rate integration requirements of Section 254(g) are not affected by these issues and further consideration of Section 254(g) in this proceeding is unnecessary.

Respectfully submitted,

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June 1, 2004

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<sup>12</sup> *See id.*, ¶ 7.

<sup>13</sup> *Id.*, ¶ 7.